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OCTOBER TERM, 1994

NATIONAL PRIVATE TRUCK COUNCIL, INC., WESTINGHOUSE ELECTRIC CORPORATION and ROY E. GRIFFIS,

Petitioners,

v.

OKLAHOMA TAX COMMISSION, *et al.*,

Respondents.

On Writ of Certiorari to the Supreme Court of Oklahoma

BRIEF OF THE NATIONAL RETAIL FEDERATION AS AMICUS CURIAE IN SUPPORT OF THE PETITIONERS

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BRIEF OF THE NATIONAL RETAIL FEDERATION AS AMICUS CURIAE IN SUPPORT OF THE PETITIONERS

STATEMENT OF INTEREST[1]

The National Retail Federation (the "Federation") is the world's largest retail trade association. Its members include department, specialty, discount, mass merchandise and independent stores, as well as 31 national and 50 state associations. Despite differences in product line, customer base and the size of their businesses, the members of the Federation share certain characteristics: They conduct business in interstate commerce, they are subject to innumerable state and local taxes, including property, income and excise taxes; and they are responsible for

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[1] Counsel for all parties have consented to the filing of this amicus brief. Amicus has filed those consents with the Clerk of this Court.

the collection of state sales and use taxes from their customers and the remission of those taxes to state authorities.

At the same time that members of the Federation have recognized the obligation to pay and collect taxes under applicable state law, they have resisted the imposition of such taxes when they conflict with the requirements of the United States Constitution. Some members of the Federation, for example, have challenged state laws requiring the collection of sales and use taxes when they lacked a sufficient nexus to the taxing state and when the tax at issue otherwise discriminated against interstate commerce.

Like the Petitioners in this case, the Federation believes that when a state tax violates the United States Constitution, state courts of general jurisdiction cannot refuse to entertain all applicable claims under federal law, including those Congress has established for prevailing parties under 42 U.S.C. §§ 1983 and 1988. That conclusion follows from the plain language of 42 U.S.C. §§ 1983 and 1988, the dictates of the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, and this Court's decisions in *Dennis v. Higgins*, 498 U.S. 439 (1991), and *Howlett v. Rose*, 496 U.S. 356 (1990).

Contrary to these settled principles, however, the Oklahoma Supreme Court held that Petitioners were not entitled to bring their § 1983 and § 1988 claims in state court. *See Private Truck Council of America, Inc. v. Oklahoma Tax Comm'n*, 879 P.2d 137 (Okla. 1994) (per curiam). In doing so, the court relied on, and misapprehended the meaning of, the Tax Injunction Act, 28 U.S.C. § 1341 (1988) (the "Act" or "Tax Injunction Act"), which only prevents taxpayers from challenging state taxes in federal court. *Id.* The Federation submits this amicus brief in support of the Petitioners and urges the Court to reverse the decision of the Oklahoma Supreme Court.

INTRODUCTION AND SUMMARY

In ruling that Petitioners may not file claims under 42 U.S.C. §§ 1983 and 1988 when challenging the constitutionality of a state

tax, the Oklahoma Supreme Court disregarded several overriding requirements of federal law. To begin with, § 1983 and § 1988 plainly grant relief to taxpayers who can establish the invalidity of a state tax on Commerce Clause grounds. By their plain terms, the two statutes grant remedies to the "prevailing" party for the "deprivation of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. §§ 1983 and 1988. Neither statute, it is clear, makes any exception for state tax claims. *See Dennis v. Higgins*, 498 U.S. at 451 (the state court "erred in holding that [the taxpayer's] Commerce Clause claim could not be brought under 42 U.S.C. § 1983").

Under the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, moreover, state courts of general jurisdiction do not have a free hand in deciding whether to entertain actions arising under federal law. Once they open their doors to one class of actions under state law, they cannot refuse to hear similar actions arising under federal law. Such discrimination against federal rights violates the "constitutional duty" that the Supremacy Clause "imposes on state courts . . . 'to proceed in such a manner that all the substantial rights of the parties under controlling federal law [are] protected.'" *Felder v. Casey*, 487 U.S. 131, 151 (1988) (quoting *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 245 (1942)). This anti-discrimination principle applies with equal force to § 1983 actions, as the Court recently confirmed in *Howlett v. Rose*, 496 U.S. at 375 (the "Florida court's refusal to entertain . . . § 1983 claims, when the court entertains similar state-law actions against state defendants, violates the Supremacy Clause"). Here, since the Oklahoma courts entertain declaratory and injunctive relief actions challenging the validity of state taxes — and did so in this case — they cannot refuse to entertain related federal challenges to those taxes.

Nor does the Tax Injunction Act of 1937 alter these requirements. The Act limits the jurisdiction of federal "district courts" to enjoin state taxes, not state courts. 28 U.S.C. § 1341. As a forum-shifting provision that directs where state tax challenges must be filed, the Act by no means cuts back on the scope of

§ 1983 actions or for that matter speaks to the scope of *state court jurisdiction* at all.

Adopting the Oklahoma Supreme Court's analysis also would virtually, if not altogether, prevent § 1983 from being used in state tax cases. That is implausible as a matter of textual analysis, since the plain language of § 1983 reveals that it applies to "any" deprivation of constitutional rights. This interpretation is also implausible as a matter of legislative intent. If one law typifies the evils that § 1983 was designed to address, it is a racially discriminatory poll tax. Yet under the analysis adopted by the Oklahoma Supreme Court, even that deprivation of civil rights could not be attacked — though it was just such deprivations of constitutional rights that § 1983 was designed to address in the first place. There is, in short, no tenable basis for concluding that the Tax Injunction Act either explicitly or implicitly repealed § 1983's application to unconstitutional state taxes.

ARGUMENT

I. SECTIONS 1983 AND 1988 GRANT RELIEF TO "PREVAILING" PARTIES FOR THE "DEPRIVATION OF ANY RIGHTS" PROTECTED BY THE CONSTITUTION.

The Oklahoma Supreme Court dismissed Petitioners' § 1983 and § 1988 claims, holding that the Tax Injunction Act and general principles of comity prevented such claims from being brought in state court. In showing why that conclusion is mistaken, it is important at the outset to clarify that Sections 1983 and 1988 make no exception for unconstitutional state taxes. By their plain terms, the statutes apply to violations of all constitutional rights. Section 1983 permits parties to obtain relief from the "deprivation of *any* rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983 (1988) (emphasis added). Section 1988 permits "the prevailing party" to obtain attorney's fees in "*any* action" under § 1983. 42 U.S.C. § 1988 (1988 & Supp. V 1993), *as amended by* Pub. L. No. 103-322 § 40303, 108 Stat. 1942 (1994) (emphasis added). The statutes make no distinction between state taxes and other state

laws, between personal rights and property rights, or between violations of the Commerce Clause and violations of other constitutional guarantees. The relief mandated by Congress under these statutes, in other words, extends to the deprivation of any and all rights secured by the Constitution, including those established by the Commerce Clause.

Confirming the point, this Court recently held that the Nebraska Supreme Court "erred in holding that [the taxpayer's] Commerce Clause claim could not be brought under 42 U.S.C. § 1983." *Dennis v. Higgins*, 498 U.S. 439, 451 (1991). As *Dennis* demonstrates, the Commerce Clause is no less "the source of a right of action" under § 1983 than other federal rights. *Id.* at 450.

II. THE SUPREMACY CLAUSE REQUIRES STATE COURTS TO ENTERTAIN SECTION 1983 CLAIMS WHEN THEY ENTERTAIN SIMILAR CLASSES OF ACTIONS UNDER STATE LAW.

Just as the plain language of §§ 1983 and 1988 extends to Commerce Clause challenges, the Supremacy Clause of the United States Constitution requires state courts of general jurisdiction to entertain claims under §§ 1983 and 1988. "This Constitution and the laws of the United States," the Supremacy Clause affirms, "shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby." U.S. Const. art VI. In view of that requirement, "[t]he laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are." *Claflin v. Houseman*, 93 U.S. 130, 136-37 (1876); *see Minneapolis & St. Louis R.R. v. Bombolis*, 241 U.S. 211, 222 (1916); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 571 (1832) ("Where, by the Constitution, the power of legislation is exclusively vested in congress, they legislate for the people of the Union, and their acts are as binding as are the constitutional enactments of a state legislature on the people of the state.").

Time and time again, this Court has held that in light of the Supremacy Clause state courts do not have a free hand in

determining whether to entertain federal causes of action. Once a State decides to create courts of general jurisdiction that entertain certain classes of actions, it cannot subsequently exclude from those courts similar classes of actions arising under federal law. Such discrimination against federal rights violates the "constitutional duty" that the Supremacy Clause "imposes on state courts . . . 'to proceed in such a manner that all the substantial rights of the parties under controlling federal law [are] protected.'" *Felder v. Casey*, 487 U.S. 131, 151 (1988) (quoting *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 245 (1942)). *See also Testa v. Katt*, 330 U.S. 386, 394 (1947) (Rhode Island courts could not decline jurisdiction over claims under the federal Emergency Price Control Act when jurisdiction was otherwise "adequate and appropriate under established local law"); *Miles v. Illinois Central R.R.*, 315 U.S. 698, 703-04 (1942) ("By virtue of the Constitution, the courts of the several states must remain open to such litigants on the same basis that they are open to litigants with causes of action springing from a different source"); *McKnett v. St. Louis & S.F. Ry.*, 292 U.S. 230, 232-34 (1934) (since state court had "general jurisdiction of the class of actions to which that here brought belongs," the refusal to hear an action under Federal Employers' Liability Act ("FELA") discriminated against federal rights); *Mondou v. New York, N.H. & H. R.R.*, 223 U.S. 1, 59 (1912) (Connecticut state courts are obligated to enforce rights under the FELA "when their jurisdiction, as prescribed by local laws, is adequate to the occasion").

Most recently, in *Howlett v. Rose*, 496 U.S. 356 (1990), a unanimous Court laid to rest any confusion about the application of this anti-discrimination principle in the context of § 1983 claims. At issue in *Howlett* was a Florida rule of law that conferred immunity on state governmental entities from federal civil rights actions under § 1983, even though the entities were not immune in otherwise identical state-law tort actions. As an initial matter, the Court noted:

> A state court may not deny a federal right, when the parties and controversy are properly before it . . . The existence of the jurisdiction creates an implication of the duty to exercise it.

Id. at 369-70. (citations and internal quotation omitted). The "implication of the duty" to hear federal claims, the Court continued, becomes mandatory if the State's courts permit similar types of action to be heard "according to their regular modes of procedure." *Id.* at 367. The Court then concluded that "the Florida court's refusal to entertain . . . § 1983 claims, when the court entertains similar state-law actions against state defendants, violates the Supremacy Clause." *Id.* at 375. At the same time, the Court also made clear that this requirement relates not to whether state and federal *courts* must entertain similar actions, but to whether state courts must entertain similar state and federal *claims*. *See, e.g., id.* at 380 ("A state policy that permits actions against state agencies for the failure of their officials to adequately police a parking lot and for the negligence of such officers in arresting a person on a roadside, but yet declines jurisdiction over federal actions for constitutional violations by the same persons can be based only on the rationale that such persons should not be held for § 1983 violations in the courts of the State," an explanation that "flatly violates the Supremacy Clause").

Howlett plainly applies here. Like the Florida courts at issue in *Howlett*, the Oklahoma courts at issue here are courts of general jurisdiction that have authority to entertain challenges to the validity and application of a state tax. Accordingly, when Petitioners challenged the validity of an Oklahoma tax in these courts, they were entitled to bring all related federal causes of action, including claims under 42 U.S.C. §§ 1983 and 1988.

III. THE TAX INJUNCTION ACT DOES NOT BAR SECTION 1983 CHALLENGES TO UNCONSTITUTIONAL STATE TAXES IN STATE COURT.

The Oklahoma Supreme Court, it is true, did not purport to take issue with either *Dennis* or *Howlett*. The court acknowledged that *Dennis* "decided that the Commerce Clause creates rights that can be asserted under 42 U.S.C. § 1983 because the Commerce Clause confers rights, privileges or immunities within the meaning of § 1983." *Private Truck Council of America, Inc. v. Oklahoma Tax Comm'n*, 879 P.2d 137, 139-40 (Okla. 1994)

(per curiam). Likewise, the court recognized that *Howlett* "requires state courts to enforce federally created remedies 'according to their regular modes of procedure.'" *Id.* at 141 (quoting *Howlett*, 496 U.S. at 367).

Still, the court claimed that *Dennis* and *Howlett* were distinguishable because they failed to consider "principles of comity" and the requirements of the Tax Injunction Act. *Id.* Reasoning that the Act generally prevents litigants from challenging the validity of state taxes in federal court, the court concluded that "state courts are not required" to entertain §§ 1983 and 1988 challenges to state taxes "when federal courts would be prohibited from doing so." *Id.* However, neither the Tax Injunction Act nor general principles of comity can bear this heavy reliance. Nor, for that matter, can the requirements of *Dennis* and *Howlett* be overcome so easily.

First and foremost, the Oklahoma Supreme Court misconstrued the meaning of the Tax Injunction Act. The plain import of the Act is to limit the jurisdiction of federal courts, not state courts. The language of the Act, above all else, makes that clear. "The *district courts*," it says,

> shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had *in the courts of such State*.

Id. (emphasis added). The Act thus is merely a forum-shifting provision that directs where state tax challenges must be filed; but the Act by no means cuts back on the scope of § 1983 actions or indeed speaks to the scope of *state court jurisdiction* at all.

In view of the clear language of the Act, there is no need to look beyond its text, which directly contradicts the Oklahoma Supreme Court's conclusion that the Act somehow limits the authority of state courts to entertain § 1983 claims. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). Even so, it is worth adding that the legislative history confirms what the text so clearly establishes. The Act's primary sponsor, Senator Bone (D-Wash), indicated that the Act only "would affect *the*

jurisdiction of district courts of the United States over suits relating to the collection of State taxes," and the "purpose of the bill is to *take away the jurisdiction of Federal district courts*." 81 Cong. Rec. 1415 (1937) (emphasis added). Other sections of the legislative history are to the same effect. They indicate that the Act was designed to preserve state access to tax revenues during litigation, and ultimately to limit the authority of life-tenured federal judges to impact State revenue collection. The Senate Judiciary Committee stated that the bill would enable "States and their various agencies to survive while long-drawn-out tax litigation is in process." S. Rep. No. 1035, 75th Cong., 1st Sess. 1 (1937). It further noted that under existing law, federal courts had authority to enjoin state tax collection, thereby permitting taxpayers "to withhold . . . taxes in such vast amounts and for such long periods of time as to seriously disrupt State and county finances." *Id.* at 2.

Not one of the explanations for adopting the Act indicates that Congress was reluctant to allow *state courts* to entertain all or even certain types of state tax challenges. On the contrary, they suggest that the Act was designed to funnel *all* such challenges to state courts. Consistent with this understanding (and in contrast to the decision below), this Court has frequently stated that litigants are *required* to file § 1983 actions in state court in order to comply with the forum-shifting requirements of the Tax Injunction Act. *See, e.g., Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 122 (1984) ("Challenges to the validity of state tax systems under 42 U.S.C. § 1983 . . . *must be brought in state court*" (emphasis added)); *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514-15 & n.19 (1981) ("The Tax Injunction Act embodied Congress' decision to transfer jurisdiction over a class of substantive claims from the federal district courts to the state courts."); *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981) (in denying *federal* court jurisdiction over a § 1983 challenge to state taxation, the Court observed that Missouri courts had "expressly held that plaintiffs such as petitioners may assert a § 1983 claim in state court").

Several state courts have reached similar conclusions. *See, e.g., Harlan Sprague Dawley, Inc. v. Indiana Dep't of State Revenue*, 583 N.E.2d 214, 221 (Ind. Tax Ct. 1991) ("application of the [Tax Injunction Act's] standard in state court would operate to bar § 1983 claims from both state and federal fora, a result not intended by the [Act]"); *Bung's Bar & Grille v. Florence Township*, 502 A.2d 1198, 1214-15 (N.J. Super. Ct. Law Div. 1985) (the Tax Injunction Act could not intend to prohibit access to all courts for § 1983 claims); *Marx v. Truck Renting & Leasing Ass'n*, 520 So.2d 1333, 1346 (Miss. 1987) ("[I]t is the absence of federal jurisdiction under [the Tax Injunction Act] which operates to open the door to the state courthouse so that the taxpayer may there assert his § 1983 claim"). *See generally, Bloomingdale's By Mail Ltd. v. Huddleston*, 848 S.W.2d 52 (Tenn. 1992), *cert. denied*, 1135 S. Ct. 3002 (1993); *Murtagh v. County of Berks*, 634 A.2d 179 (Pa. 1993), *cert. denied*, 114 S. Ct. 1397 (1994).[2]

As these cases suggest, one of the extraordinary consequences of the Oklahoma Supreme Court's decision is to deprive taxpayers of *any* forum in which to raise §§ 1983 and 1988 claims in state tax cases. For the Tax Injunction Act would generally prohibit the filing of such claims in federal court, while the decision below

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[2] Commentators have reached similar conclusions. *See, e.g.*, William L. Taylor, *Section 1983 in State Court: A Remedy for Unconstitutional State Taxation*, 95 Yale L.J. 414, 419 (1985) ("Given that federal courts cannot entertain state tax section 1983 claims and that the remedies under that section are needed to ensure the protection of taxpayers' rights, the assured availability of state courts as fora for these claims is of paramount importance."); Mark S. Poker, *Utilizing Constitutional Torts Against State Tax Officials: Leveling the Playing Field*, 10 (No. 3) Journ. State Tax'n 63, 69 (1991)("The application of the Tax Injunction Act to state court proceedings to deny taxpayers a forum defies logic"); *See generally* Note, *Clarifying Comity: State Court Jurisdiction and Section 1983 State Tax Challenges*, 103 Harv. L. Rev. 1988 (1990); Anne R. Yuengert, *Does the Tax Injunction Act of 1937 Affect State Court Jurisdiction Over State Tax Challenges Under Section 1983 of the Civil Rights Act of 1871?*, 45 Wash. & Lee L. Rev. 381(1988).

would prohibit those same claims from being filed in state court. Such an interpretation thus would repeal § 1983's settled application to state tax challenges. That is an untenable interpretation of the Tax Injunction Act under established rules of statutory construction.

Plainly, the text of the Tax Injunction Act (enacted in 1937) contains no indication that it was intended to cut back on the scope of § 1983 (enacted in 1871). The text focuses on the appropriate forum for state tax claims, not on the law applicable to them. Nor does the legislative history advance this interpretation. The House and Senate Reports both provide that the Act was not intended to foreclose any federal rights and remedies:

> It should be emphasized that the bill does not take away any equitable right of the taxpayer or *deprive* him of his *day in court* . . . . A full hearing and judicial determination of the controversy is assured.

H.R. Rep. No. 1503, 75th Cong., 1st Sess., at 2 (1937) (emphasis added); *see also*, 81 Cong. Rec. at 1416 (comments by Sen. Bone).

Here, however, it is beyond dispute that the Oklahoma Supreme Court "deprive[d]" Petitioners of their "day in court" on their § 1983 claims. The court's analysis, moreover, would deny § 1983 relief with respect to all unconstitutional taxes, even those that the civil rights laws were clearly intended to cover. If one law typifies the evils that § 1983 was designed to address, it is a racially discriminatory poll tax. *See Wilson v. Garcia*, 471 U.S. 261, 273 n.31 (1985). Yet under the decision below, even that deprivation of civil rights could not be attacked — though it was just such deprivations of constitutional rights that § 1983 was designed to address in the first place. *Cf. Terry v. Kolski*, 254 N.W.2d 704, 709 n.2 (Wis. 1977) (such a decision would "ratify adherence to the very evil the civil rights acts were designed to obviate — the refusal of state courts and officers to vindicate civil rights afforded by the Constitution").

Nor does the Tax Injunction Act repeal § 1983 by implication — at least, that is, the part of § 1983 that applies to unconstitutional state taxes. Such repeals, this Court has indicated, are highly "'disfavored.'" *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1017 (1984) (quoting *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 133 (1974)). Indeed, "[i]n the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable." *Morton v. Mancari*, 417 U.S. 535, 550 (1974). No such "intention to repeal" exists here. Nor are the two statutes "irreconcilable": State court jurisdiction of § 1983 tax challenges affirms the principles of § 1983 (enforcement of civil rights) and those of the Tax Injunction Act (noninterference of federal courts with state taxes).

The Oklahoma Supreme Court also erred in concluding that it would somehow be incongruous to require state courts to exercise jurisdiction over federal claims that cannot also be heard in federal court. The result is not unusual, but simply follows from the nature of our federalist system. In particular, it follows from having a judicial system containing federal courts of limited jurisdiction and state courts of general jurisdiction. A Connecticut state court recently reached this same conclusion:

> "[F]ederal courts . . . are courts of limited jurisdiction marked out by Congress." State . . . courts, in contrast, are courts of general jurisdiction . . . .
>
> In a judicial system characterized by this architecture, it is not at all anomalous for state courts to have jurisdiction over matters that federal courts cannot lawfully adjudicate. Domestic relations matters are an obvious example. State tax appeals are another . . . . Neither the letter nor spirit of § 1341 are violated by the existence of such state court jurisdiction. This jurisdiction, in fact, fully implements the policies of *both* § 1983 (i.e. the vindication of civil rights) and § 1341 (i.e. the noninterference of federal courts in state tax matters) in a way that federal jurisdiction does not.

Pechiney Corp. v. Crystal, 643 A.2d 319, 321 (Conn. Super. Ct. 1994) (citations omitted).

No less flawed is the argument that § 1983 and § 1988 should not apply in "business" cases or that states should not be compelled to pay attorney's fee awards in such cases. As shown, the two statutes make no distinctions between corporate litigants and individuals ones. All taxpayers, Congress has determined, deserve relief. Nor is the policy reflected in this language in any way unsound. After all, only "prevailing" parties — i.e., those who have established the unconstitutionality of a state tax — obtain the benefits of these statutes. That is an appropriate remedy when states impose unconstitutional taxes. As the diverse membership of the Federation reveals, not all retailers are large and not all retailers can afford to litigate unconstitutional taxes. What is more, many of the Commerce Clause questions that retailers litigate concern taxes imposed on *consumers*, not retailers, though it is retailers that ultimately bear responsibility for collecting the taxes under state law. In any event, the wisdom of permitting *all* taxpayers to file § 1983 and § 1988 claims is a matter of policy, which can be modified properly only by congressional — not judicial — action.

Finally, the Oklahoma Supreme Court claimed that "principles of comity" independently supported its decision. 879 P.2d at 141-42. That, too, is wrong. "Principles of comity" no doubt underlie the Tax Injunction Act's determination that federal courts should defer to state courts in resolving state tax disputes. But surely respect for state courts in tax cases does not at the same time give those courts authority to decline jurisdiction over federal claims. On the contrary, principles of comity — respect for the laws of another jurisdiction — require precisely the opposite result. *Cf. Nutbrown v. Munn*, 811 P.2d 131, 138 (Or. 1991) (noting that neither principles of comity nor the Tax Injunction Act "control[s] state trial procedure"), *cert. denied*, 502 U.S. 1030 (1992). Thus, while the Tax Injunction Act gives states the right to be free from federal court interference in state tax matters, it by no means gives them the right to be free from federal claims.

CONCLUSION

For the foregoing reasons, the Federation supports the position of the Petitioners and urges the Court to reverse the decision of the Oklahoma Supreme Court.

Respectfully submitted,

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